IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision:31.07.2007

1. C.W.P. No.3679 of 1995

Gurmail Singh **.....Appellant**

Vs.

The State of Punjab **.....Respondent**

2. C.W.P. No.9510 of 1995

Harmesh Singh Pabla **.....Appellant**

Vs.

The State of Punjab **.....Respondent**

3. C.W.P. No.103 of 2001

R.S.Randhawa **.....Appellant**

Vs.

The State of Punjab and others **.....Respondents**

4. C.W.P. No.8069 of 2001

Jagmohan Singh Dhillon **.....Appellant**

Vs.

The State of Punjab and others **.....Respondents**

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Rajiv Atma Ram, Senior Advocate with Mr. Abhishek Shukla, Advocate, Mr. R.S.Longia, Advocate and Mr. Sanjeev Sharma, Advocate for the petitioners.

Mr. Arvind Mittal, Addl. AG, Punjab.

Mr. V.K.Kaushal, Advocate for Mr. B.R.Mahajan, Advocate for respondent No.8 in C.W.P. No.103 of 2001.

Mr. D.V.Sharma, Senior Advocate with Mr.Harit Sharma, Advocate for respondents No.15, 26 and 27 in C.W.P. No.103 of 2001.

Mr. R.D.Bawa, Advocate for respondents No.19, 21, 22 and 24 in C.W.P. No.103 of 2001.

Mr. R.N.Raina, Advocate for respondents No.26, 28 and 40 in C.W.P. No.103 of 2001.

Mr. Ajay Tewari, Advocate for respondents No.32, 36 and 38 in C.W.P. No.103 of 2001.

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This is a bunch of four writ petitions involving similar questions of fact and law. The point in issue is the grant of benefit of military service towards fixation of seniority and pay in the PCS (Executive Branch) with all consequential benefits. The facts are being noticed from C.W.P. No.3679 of 1995.

The pleaded facts are that the petitioner is a Released Armed Forces Personnel who was commissioned on 6.9.1970 and was released from the Army on 2.12.1980. The vacancies in the PCS (Executive Branch) Class-I Service became available for direct recruitment from the year 1977 year onwards. By the year 1981, 40 vacancies were available. The benefit of military service was available in terms of Punjab Civil Service (Executive Branch) Rules, 1972 (for short, `the 1972 Rules'). The 1972 Rules provided for reservation of 20% of the vacancies in the PCS (Executive Branch) to be filled in by direct recruitment. It also provided for fixation of pay, seniority and other retiral benefits. The 1972 Rules were to have overriding effect notwithstanding anything to be contrary contained in any other Rules. While issuing the advertisement for selection to the vacancies in 1982, the respondents provided reservation for Ex-servicemen at the rate of 15% in terms of the 1982 Rules, which had reduced the quota for Ex-servicemen from 20% of the vacancies to 15%. The action of the respondents in applying the 1982 Rules for determining the reserved vacancies existing prior to the coming into force of the 1982 Rules for Ex-servicemen was challenged in this Court. In various writ petitions, namely, C.W.P. No.3674, 4716, 5468, 4859 of 1985 decided on 8.4.1986 (Annexure P-2), the claim of the petitioners therein, which included some of the present petitioners as well, was upheld and it was held that any vacancy arising prior to the repeal of 1972 Rules would be governed by the 1972 Rules and 20% of the vacancies arising upto that date were required to be reserved for Ex-servicemen. The averments made in the writ petition, to the extent that the above referred judgment of learned Single Judge of this Court was upheld upto Hon'ble the Supreme Court, are not denied. In compliance to the judgment, the respondents gave benefit of reservation of 20% of the vacancies and 8 persons in the Ex-servicemen category were appointed. After the appointment, the petitioner submitted a representation claiming

that his seniority and pay be fixed in terms of Rule 4 of the 1972 Rules. However, during the pendency of the representation, a tentative seniority list was issued which did not reflect the benefit available to the petitioner in terms of Rule 4 of the 1972 Rules. The petitioner objected to the tentative seniority list. Vide order dated 6.5.1991, the claim made by the petitioner regarding fixation of his seniority in terms of the 1972 Rules was rejected and it was held by the respondents that his claim is to be considered only in terms of 1982 Rules because the appointment of the petitioner was made in the year 1986 when the 1982 Rules in force.

In the written statement filed, the primary fact regarding the availability of vacancies before the repeal of the 1972 Rules is not denied. There is nothing new except the reiteration of the stand taken in the order rejecting the claim of the petitioners, i.e., on the ground that the petitioner having became member of the service on 18.3.1986, when the 1982 Rules were in force, could not be granted the benefit of the 1972 Rules. It is admitted that the petitioners were given appointment by calculating the vacancies by providing reservation at the rate of 20% thereof in terms of the judgment of this Court. It is further admitted that in total 40 vacancies were existing prior to the coming into force of the 1982 Rules and it was on the basis thereof that 8 persons were selected and appointed by giving 20% reservation.

Before the issue is dealt with in detail, it would be appropriate to extract the relevant provisions of the 1972 Rules, the interpretation of which is involved in the present case. The relevant extract thereof is as under:-

1. (1) These rules may be called the Demobilized Indian Armed Forces Personnel (Reservation of Vacancies in the Punjab Civil Service) (Executive Branch) Rules, 1972.

   (2) They shall come into force at once.

   (3) These rules shall apply to all posts in the Punjab Civil Service (Executive Branch) which are filled up by direct recruitment as a result of the competitive examination conducted by the Punjab Public Service Commission.

   RESERVATION OF VACANCIES.

2. (1) Twenty percent of the vacancies in the Punjab Civil Service (Executive Branch) to be filled in by direct recruitment shall be reserved for being filled in from amongst the Released Indian Armed Forces Personnel who joined military service or were commissioned on or after the first day of November, 1962 and are released at any time thereafter:

Provided that the Released Indian Armed Forces Personnel shall not be required to appear in optional subjects of the competitive examination.

(2) On receipt of the result of the competitive examination from the Punjab Public Service Commission, one vacancy in every block of five vacancies shall be earmarked for the Released Indian Armed Forces Personnel.

(3) Where in any year any vacancies reserved for the Released Indian Armed Forces Personnel, such vacancies may be filled up temporarily from any other source in accordance with the Punjab Civil Service (Executive Branch) Rules, 1930. The number of such vacancies shall be carried forward to the next succeeding years:

Provided that no such vacancy shall be carried forward for a continuous period of more than four years:

Provided further that the total number of vacancies reserved for the Released Indian Armed Forces Personnel and the Scheduled Castes, Scheduled Tribes and Backward Classes in the Punjab Civil Service (Executive Branch) shall not exceed in any year, forty five per cent of the total number of vacancies to be filled in by direct recruitment in the service in that year.

QUALIFICATIONS, AGE LIMIT ETC. OF RELEASED INDIAN ARMED FORCES PERSONNEL:

3. No Released Indian Armed Forces Personnel shall be eligible to appear in the competitive examination

prescribed for recruitment to the Punjab Civil Service (Executive Branch) unless:-

(a) he possesses the minimum academic qualifications prescribed in the Punjab Civil Service (Executive Branch) Rules, 1930;

(b) his age at the time of joining military service, or training prior to the Commission as the case may be does not exceed the upper age-limit prescribed in the Punjab Civil Service (Executive Branch) Rules, 1930;

Provided that no such candidate be permitted to compete more than three times at the examination; and

(c) after release from the Armed Forces of the Indian Union, he is found to be medically fit in accordance with the provisions of the Punjab Civil Service (Executive Branch) Rules, 1930.

FIXATION OF PAY SENIORITY AND RETIREMENT BENEFITS.

4.(1) The period of military service rendered after attaining the minimum age prescribed for appointment to the Punjab Civil Service (Executive Branch), by the candidates appointed against reserved vacancies under rule 2, shall count towards fixation of pay and seniority in the said service, subject to the condition that:-

(a) the date of appointment in the PCS (Executive Branch) in respect of such candidates as are appointed against the reserved vacancies under rule 2 shall be determined on the assumption that they joined the service under the State Government at the first opportunity they had after joining the military service or training prior to the Commission;

(b) the inter se seniority of the military personnel determined by the Punjab Public Service Commission shall not be distrubed;

(c) a military personnel appointed as a result of an earlier selection shall be senior to a military personnel

appointed as a result of subsequent selection irrespective of the period of military service to his credit; and

(d) all candidates appointed against the reserved vacancies under rule 2 shall rank below the candidates appointed by direct recruitment in the year to which the former candidates are allotted.

(2) The period of military service rendered after attaining the minimum age mentioned in sub rule (1) shall also count towards pension, subjectto the following conditions:-

(a) The persons concerned should not have earned pension under the rules applicable to such service except disability pension;

(b) Any bonus or gratuity received from the military authorities in respect of military service shall have to be refunded to the State Government.

5. OVERRIDING EFFECT OF THESE RULES.

The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any other rules."

I have heard learned counsels appearing for the parties in all the Civil Writ Petitions.

The primary contention raised by learned counsel appearing for the petitioners is that admittedly vacancies in the present case pertained to the period prior to coming into force of the 1982 Rules when 1972 Rules were enforced. Merely because due to delay in process of selection, the appointment of the petitioners having been made after 1972 Rules were repealed does not mean that petitioners shall be governed by 1982 Rules as far as their appointment is concerned. Further it is submitted that in fact the issue in the present case is squarely covered by earlier judgment of this court in **Ishar Singh and another v. The State of Punjab and others** (Annexure P-2) wherein this Court held that for the vacancies arising upto the repeal of 1972 Rules, its provisions would be applicable and reservation of 20% to the Ex-servicemen shall be granted as against 15% available

under the 1982 rules and accordingly, the selection and appointments of the petitioners were made. Not only this while considering the contention raised by the petitioners in the earlier writ petition, it was also considered that under the 1972 Rules, the vacancies could be carried forward for a period of 4 years and it was found that all the vacancies available at that time were pertaining to the years 1977-1981. Accordingly, the same could be filled up as per 1972 Rules. If that is so, giving effect to the judgment of this Court in **Ishar Singh's case (supra),** which has been upheld up to Hon'ble the Supreme Court, the petitioners are entitled to get the benefits available under the 1972 Rules in terms of Rule 4(a) thereof.

In addition to the judgment of this Court in **Ishar Singh's case (supra)**, learned counsel appearing for the petitioners have also relied upon judgment of this Court in **Dr. Balraj Bhardwaj v. State of Punjab and another,** 2004(3) SLR 765, which was upheld in L.P.A. No.168 of 2004 vide order dated January 29, 2007.

On the other hand, learned counsel for the State tried to justify the rejection of the claim of the petitioners on the ground as mentioned in the impugned order i.e petitioners having been given actual appointment after coming into force of 1982 Rules cannot be given benefit of 1972 Rules for giving them deemed date of appointment, for the purpose of seniority etc. To similar effect is the plea raised by learned counsels appearing for the private respondents in Civil Writ Petition No.103 of 2001. While submitting that the issue in the judgment in **Ishar Singh's case (supra)**, was only to the extent as to how much percentage of vacancies are to be reserved for Ex-servicemen and nothing else. Learned counsel for the respondents have relied upon **Datar Singh v. State of Punjab,** 1998(2) PLR 116; **State of Punjab v. Kailash Nath,** AIR 1989 SC 558; **Lilly Kurian v. Sr. Lewina and others,** AIR 1979 SC 52; **Arvinder Singh Bains v. State of Punjab and others,** AIR 2006 SC 2265; **Ajit Kumar Rath v. State of Orissa and others,** (1999) 9 SCC 596 and **Jacob and another v. State of Punjab and others** – C.W.P. No.14829 of 1998 decided on 7.10.1998.

Having heard learned counsel for the parties and perusing the material on record and the judgment cited by the learned counsel for the parties, this Court is of the opinion that the claim made by the petitioners

merits acceptance.

While dealing with the claim made by some of the petitioners herein, this Court in a bunch of writ petitions, namely, **Ishar Singh's case (supra)** accepted the claim of the petitioners therein to hold that all the vacancies which were existing prior to coming into force of the 1982 Rules should be considered under the those Rules and the quota prescribed under 1972 Rules, i.e., 20% of the vacancies should be reserved for Ex-Servicemen and for any vacancies arising after coming into force of 1982 Rules, i.e., on or after 12.2.1982, the quota may be taken as 15% as per the 1982 Rules. The relevant extract of the judgment is as under:-

> "The first point which has been raised on behalf of the petitioners is that the vacancies which occurred or were left over from 1979 to 1982 had to be carried forward to fill up or make up the quota of ex-servicemen as required by the 1972 Rules as also by the 1982 rules, because the advertisement for recruitment was made on 1.5.1982. It is also urged that the quota of the ex-servicemen had to be taken as 20 per cent till before 12.2.1982 when 1982 rules came into force and from 12.2.1982 the quota stood reduced to 15 per cent and, therefore, the vacancies which arose on and after 12.2.1982 were to be reserved for ex-servicemen on the basis of 15 per cent quota and earlier thereto on the basis of 20 per cent quota. In support of the argument reliance is placed on Y.V.Ranquiah and others vs. J.Sreenivasa Rao and others A.I.R. 1983 S.C. 852 and a Division bench judgment of this Court in Krishan Lal Bhatia vs. The State of Punjab, 1985(2) S.L.R.50. Both the aforesaid decisions fully support the petitioners for the contention that the reservation quota in the vacancies, which occurred before 12.2.1982 would be 20 per cent for the ex-servicemen and from 12.2.1982 it would be 15 per cent. The carry forward rule under the 1972 Rules as well as the 1982 rules till before amendment of 1984 was for a period of four years and it was amended by the 1984 amendment, which came into effect from 30th April, 1984. Therefore, when the advertisement was made on 1.5.1982 for recruitment, the left

over vacancies from 1979 upto 1982 had to be taken into consideration and similarly the vacancies which occurred thereafter would also be taken note of for providing the relevant quota of 20 per cent or 15 per cent, as the case may be. As noted above, on the basis, the posts would be made available to the category of ex-servicemen. The vacancies which occurred on or after 30th April, 1984 would be carried forward on the basis of the 1984 amended rules, whereas earlier upfilled vacancies would be carried forward under the 1972 and 1982 unamended rules."

A perusal of the judgment of this Court in **Ishar Singh's case (supra)**, in which some of the petitioners were parties, clearly shows that this Court upheld the claim made by the petitioners to the effect that for the vacancies available prior to the repeal of 1972 Rules, the quota is to be granted to the extent of 20% of the vacancies, which was available thereunder as against 15% which was under the 1982 Rules. Meaning thereby that 1972 Rules were made applicable as far as selection of the petitioners is concerned. The object of 1972 Rules is to give benefit to the ex-servicemen which provide for a certain specified quota in the vacancies and also to give them deemed date of appointment for the purpose of seniority etc. The conditions of service of an employee had to be regulated by the same set of statutory Rules under which he is appointed unless there is a Rule to the contrary. In the present case, the appointment is under 1972 Rules. Respondents' desire to treat the petitioners having been appointed under 1982 Rules for the reason that actual appointment letters were issued after 1982 Rules had come into force, has been examined on judicial side by this Court in earlier lis between the parties (Annexure P/2) and claim made by the petitioners therein was upheld and it was directed that for the purpose of their selection, the 1972 Rules shall be applicable though the issue at that time was merely of quota to be provided to the petitioners but Rules cannot be dissected so as to give a meaning to the judgment holding that it is only for the purpose of quota that the 1972 Rules were made applicable and not for anything else. It cannot be inferred that it was only one provision of the Rule that was made applicable for the purpose of selection of the petitioners and not others. The petitioners cannot be denied the effect of the earlier

judgment in their favour in the manner sought to be suggested by the respondents. In fact, in my opinion, effect of the judgment (Annexure P/2), which has been upheld up to Hon'ble the Supreme Court, is that petitioners were deemed to have been appointed under the 1972 Rules. Accordingly, conditions of service of petitioners will have to be determined under the 1972 Rules as there is no Rule to the contrary.

While considering a somewhat similar issue, this Court in **Dr. Balraj Bhardwaj v. State of Punjab and another,** 2004(3) SLR 765 held that a candidate who applied for recruitment against the reserved vacancies existing at the time of advertisement but was appointed later on, when the old Rules were repealed and new rules had come into existence, shall be deemed to have been appointed under the old Rules and the plea raised by the State to the effect that he will not be entitled to the benefit of old Rules because on the date of his appointment those rules were not in force was rejected. It is relevant to mention here that the judgment of Single Judgment was upheld by this Court in L.P.A. No.168 of 2004 decided on 29.1.2007.

The judgment relied upon by the learned counsel for the respondents are distinguishable on facts. As far as S.S.Uppal's case (supra) is concerned, it was not a case where in an earlier litigation between the parties, any issue was determined as regards the application of Rules as are the facts in the present case. In S.S.Uppal's case (supra) after the selection and appointment to the IAS cadre, petitioner therein made a claim that since the vacancies pertained to the period prior to amendment of the Rules, he should be given the benefits of the unamended Rules, however, the same was negatived. However, in the present case, facts are entirely different. In earlier lis between the parties, it had been decided that appointment shall be made in terms of 1972 Rules by giving them quota as prescribed therein. It is pertinent to mention that 1982 Rules are not retrospective in nature, so as to take away the benefits available to the petitioners under the 1972 rules as far as their date of appointments is concerned.

All other judgments cited by the respondents are distinguishable on facts for the reason that in none of the case, the issue had earlier been gone into by the Court in between the parties.

Accordingly, writ petitions are allowed and it is held that the petitioners shall be deemed to be appointed under the 1972 Rules and the benefits flowing therefrom shall be admissible to them as per the Rules.

July 31, 2007 **(RAJESH BINDAL)**
renu **JUDGE**